



***Board of Zoning Appeals Public Hearing  
February 15, 2011 — 7:00 P.M***

<b>CASE NUMBER:</b>	<b>V-11-011</b>
<b>PROPERTY LOCATION:</b>	<b>100 Block of Stoney Ridge Drive, Johns Creek, GA 30022 1<sup>st</sup> District, 2<sup>nd</sup> Section Land Lot 927</b>
<b>CURRENT ZONING:</b>	<b>CUP Conditional (Community Unit Plan District)</b>
<b>PARCEL SIZE:</b>	<b>0.557 Acres</b>
<b>PROPERTY OWNER:</b>	<b>Robert &amp; Diane McClearen</b>
<b>PROPERTY AGENT:</b>	<b>Trae Adams, Allgood Outdoors</b>

**REQUEST**

The applicant requests a variance to encroach approximately 24 feet into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback required by the City of Johns Creek to construct a circular patio with a fire pit and install flagstone steps in the rear yard. The proposed improvement project totals 258 square feet, with 206 square feet located within the 25-foot impervious surface setback portion of the stream buffer. The subject property is located in The Ridge at Brumbelow subdivision and a stream traverses interior of the subject lot, parallel to the east property line. The subject property was originally platted with a 35 foot tributary buffer from the point of wrested vegetation. Fulton County, and subsequently the City of Johns Creek, has adopted the larger stream buffer standards of a 50-foot undisturbed buffer and an additional 25-foot impervious surface setback. The property is currently developed with a two story single-family dwelling.

**ADJACENT ZONING AND LAND USES**

The subject property is zoned CUP Conditional (Community Unit Plan District) and is located in The Ridge at Brumbelow subdivision. The subject property is located interior to the subdivision, and is bounded by CUP Conditional zoned property on three sides and a large lot residential property zoned AG-1 adjacent to the rear. North of the subject property is Bridgewater subdivision, zoned R-4A Conditional (Single Family Dwelling District). East of the subject property is the Rivermont Country Club golf course. To the west across Brumbelow Road are Hartridge and Brumbelow Crossing subdivisions, both zoned R-4A Conditional (Single Family Dwelling District).

**APPLICABLE CODE REQUIREMENTS**

City Code; Chapter 109: Natural Resources & Environmental Protection; Article V: Stream Buffer Protection: Section 109-118: Land Development Requirements.

- (i) An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the point of wrested vegetation.

- (ii) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.

## **VARIANCE REQUIREMENTS**

Staff is including the specific conditions that must be considered for a variance to be granted in an effort to assist the Board of Zoning Appeals in considering the application and its merits. These considerations include:

- (i) When a property's shape, topography or other physical conditions existing at the time of the adoption of this ordinance prevents land development unless a buffer variance is granted.
- (ii) Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship.

## **ADDITIONAL STREAM BUFFER CONSIDERATIONS**

Stream buffers are the areas of land immediately adjacent to the banks of state waters which facilitate the protection of water quality and aquatic habitat. Buffers also preserve green space, improve aesthetics, reduce stormwater runoff velocities, help control flooding, and keep stream water cool by providing shade. These buffers must remain undisturbed in their natural state during and after construction, however variances can be obtained that allow for encroachment under certain conditions. Stream buffers are regulated on both the state and local levels and each agency has different rules regarding buffer widths. The Georgia Environmental Protection Division (EPD) requires 25 foot buffers on both sides of a stream, measured from the point of wrested vegetation which is usually located at the tops of the banks. The City of Johns Creek requires an undisturbed buffer of 50 feet with an additional 25 feet where all impervious surfaces are prohibited. Variance applications may be granted on a case by case basis provided the applicant submit information showing the location of the stream, the extent of encroachment, and documentation of the unusual hardship should the buffer be maintained. These variance applications must also provide mitigation measures to offset the impacts of land development or disturbance on the proposed property. Although allowed by ordinance, granting of stream buffer variances should be kept to a practicable minimum in order to preserve water quality and minimize flood risks from future, upstream development. The location and extent of buffer encroachment, long term water quality impacts, and potential, less intrusive alternate designs are all factors to be considered in determining whether to issue a variance. Stream Buffer Variances granted by the City of Johns Creek are subject to annual audits by the Metropolitan North Georgia Water Planning District and the EPD. The City must ensure that consistency and thorough examination to long term impacts are considered in order to justify granting variances.

## **RECOMMENDATION**

The subject property was originally platted with a 35-foot tributary buffer from the banks of the stream that runs interior along the eastern portion of the property. The applicant has proposed construction of a circular patio with a fire pit in the center, along with installation of flagstone steps at the rear of the property, totaling approximately 206 square feet of additional impervious cover. The planned improvements would require a 24-foot encroachment into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback.

The site plan submitted by the applicant illustrates that under the previous stream buffer requirement, the proposed improvements would have been completed without encroaching into and maintaining a sufficient setback from the 35-foot stream buffer. With the adoption by the city of the larger stream buffer standards of

50-foot undisturbed buffer and additional 25-foot impervious surface setback, majority of the applicant's rear yard would be rendered undevelopable without seeking a variance. The requested encroachment of 24 feet would not result in the removal of mature vegetation in the rear yard, as the proposed patio, fire pit, and flagstone steps will be constructed in a previously disturbed area. Also, the applicant would provide for revegetation to mitigate the requested encroachment into the stream buffer, additionally contributing to the already dense natural vegetation existing in the rear portion of the subject lot. Furthermore, the proposed patio and flagstone steps would be constructed outside the original 35-foot tributary stream buffer, and would comply with the development requirements of the zoning ordinance.

In light of the applicant having had the ability to implement improvements on the property without seeking a variance based on the previous stream buffer requirement, willingness and acceptance to provide revegetation/mitigation on the property, and the proposed improvements not having an adverse effect on existing vegetation; the Department of Community and Development recommends **APPROVAL with conditions** of this request.

Based upon the findings and conclusions herein, Staff recommends **APPROVAL with conditions** of this request, subject to the following conditions of approval or as may be amended by the Board of Zoning Appeals:

- 1) The proposed improvements, which includes construction of a circular patio with a central fire pit and installation of flagstone steps, shall encroach no more than 24 feet in depth into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback, as shown on the site plan dated January 6, 2011.
- 2) The proposed improvements shall not exceed 206 square feet of additional impervious surface.
- 3) Obtain required building permits from the City of Johns Creek Community Development Department prior to commencement of proposed improvements.
- 4) As part of the building permit, the applicant is to submit a copy of the mitigation plan that was provided with the variance application dated January 14, 2011. The mitigation plan must clearly depict the location, number, and plant material to be installed on the property.
- 5) The applicant is required, prior to issuance of a certificate of completion, to replant vegetation on the subject property, in order to offset any adverse impact associated with additional impervious cover closer to the stream. Replanting of vegetation shall be consistent with the submitted mitigation plan dated January 14, 2011.



## Aerial and Vicinity Map

